

U.S. The United States District Court  
for the Middle District of Alabama  
Northern Division  
RECEIVED

James Robert West, Jr.,  
Plaintiff,

2008 APR 28 A 10: 16

v.  
Deyan Heath Harris, Co. I, et al.  
Defendants.

DEBRA P. HACKETT, CL.  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA

2:07-CV-747-WKW

Motion for Order

Come now the Plaintiff, James Robert West, Jr., and moves the Honorable Court to cause appropriate order to issue to clarify apparent error on record in the above-styled cause (2:07-747-WKW).

As grounds for his motion, West shows unto the Court as follows.

The Honorable Magistrate issued an order, Doc. #13-1, filed 4/6/08, wherein West was informed that the above-styled cause would be dismissed if West did not pay the amount of \$1.50 initial partial filing fee.

Included in the Magistrate's Order rendered 4/6/08, Doc. #13-1, West was notified; "On April 4, 2008, the Court granted Plaintiff's Request to Reconsider" its October 15, 2007 order and vacated the order dismissing this action, Doc. #13, 2:07-CV-747-WKW, order at p.1, paras. #1, lines #6, 7. I request clarification because I cannot find a copy of the request referred to by the Court in its order of 4/6/08, Doc. #13-1. Based on the Court's clarification of the order in this cause, if West is allowed to proceed, he moves the Court to allow him an opportunity to add defendants and re-submit an amended Complaint.

Due to routine cell shakedown by above personnel and frequent cell changes for West, practically all records in Case No. 2:07-CV-747-WKW have been lost and/or destroyed. My legal paperwork is always the primary focus of these cell shakedowns. In addition to the above, I have been transported to Court in Montgomery County on several occasions during 2007. This precluded consistently having officials ample opportunity to rummage through my legal paperwork.

Wherefore, premises considered, West prays for relief requested in that the Court please clarify action taken in Dec. #13-1, order issued 4/6/08. (Please see Verified Statement attached hereto).

Respectfully submitted April 9, 2008.

James Robert West, Jr.

*James Robert West, Jr. 110915*

B-40 State of Alabama  
DEPARTMENT OF CORRECTIONS  
Easterling Correctional Facility  
200 Wallace Drive  
Clio, AL 36017

MONTGOMERY AL 361

25 APR 2008 PM 2 T



Outgoing legal Mail

*If opened, I request to be present.*

*Case No. 2:07-cv-747-WKW*

This correspondence is forwarded from an  
Alabama State Prison. It has not been  
evaluated, and the Department of  
Corrections is not responsible for the substance  
or content of the enclosed communication.

36101+0711

*Rebecca P. Hackett*  
*Clerk*

*U. S. District Court*

*P. O. Box 711*

*Montgomery, Alabama 36101-0711*



Under the United States District Court  
For the Middle District of Alabama  
Northern Division

RECEIVED

James Robert West, Jr.,  
Plaintiff,

2008 APR 28 A 10: 16

v.

DEBRA P. HACKETT, CLERK  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA.  
2:07-CV-747-WKW

Bryan Keith Hovins, COI, et al.,  
Defendants.

Verified Statement of James Robert West, Jr.

West would submit to the Honorable Court that he did file a request with the Court regarding 2:07-CV-747-WKW and included in that request West requested the Court allow him to reopen the case in 2:07-CV-747-WKW once he got sufficient funds to pay the initial partial filing fee of \$1.50.

This Honorable Court granted the Motion To Dismiss Without Prejudice on October 15, 2007. Prior to the Court issuing the order to Dismiss Without Prejudice, West filed a request with the Clerk, Debra P. Hackett, wherein he requested information regarding the filing a new complaint ~~by~~ on about August 20, 2007.

The Clerk, Debra P. Hackett, forwarded correspondence to West wherein she addressed my correspondence dated 8/2/07. Included in that notice regarding the reopening of the case was the following: "We received your second letter on 8/2/07. If you wish to refile a new case, mail your complaint and I & P, you may forward your financial information from Easterning Prison after your case is filed. You may indicate the facts of your situation on your I & P. As requested, below are the mailing addresses for the I & P and the Marshal's Office." I did not receive this legal mail which contained this information until March 4, 2008. The legal mail was postmarked August 2, 2007. Officer Brinsley delivered the mail to me.

When I noticed the date of the postmark, 8/2/07, I requested that Officer Brinsley initial the legal mail indicating it received that legal mail on March 4, 2008. Officer Brinsley asked Lieutenant Lawson, Second Shift Supervisor, if he had initial the envelope indicating I did not receive that legal mail until 3/04/08. Lieutenant Lawson told him not to sign the envelope.

Because of a rash of incidents of physical violence by officers assigned to the segregation unit wherein I was being physically injured by the officers applying and removing handcuffs in those occasions I was removed from my assigned cell, showering, shaving etc., I filed a Civil Rights Complaint in Montgomery County Circuit Court pursuant to Title 42 U.S.C., §1983. I filed this Complaint November 5, 2007 alleging a violation of my federally protected rights under the Eighth Amendment to the U.S. Constitution.

I chose this course of action only because I was under the assumption my request dated 8/6/07 to refuse or file the Complaint in this Court had been denied by operation of law.

As I stated in my Motion to Dismiss Without Prejudice submitted to this Court in 2:07-cv-747-WKW, the only reason I submitted the motion was because I did not have sufficient funds available in my PMSO account to pay the initial partial filing fee of \$150.

Had I received that information from the Clerk, Debra P. Haskett, postmarked 8/6/07 in a timely manner, I would not have filed this Civil Rights Complaint in State Court.

I submit to this Honorable Court that the Motion For Order included a Motion to Add Defendants. I further submit to the Court that I placed the envelope which contained these legal pleadings in the U.S. Mail addressed to, Debra P. Haskett, Clerk, U.S. District Court, P.O. Box 711, Montgomery, Alabama 36101-0711. I included written notice on the outside of the envelope, "Free Legal Mail." That envelope was returned to me with the message stamped thereon, "Return No Postage." The envelope had been opened and stapled back closed. Officer Daughby returned the legal mail to me.

### Verification

I hereby declare under the penalty of perjury that all statements made herein are true and complete. All statements are based on my personal knowledge. I am competent to testify. I have included with this statement a copy of the Motion For Order that was not mailed to this Court. This is the motion referred to in the Motion to Strike.

Submitted the 25<sup>th</sup> day of April, 2008.

James Robert West, Jr.